TESTIMONY OF THE HONORABLE EARL E. DEVANEY
INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE SUBCOMMITTEE ON ENERGY AND RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
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Mr. Chairman and members of the Subcommittee, I want to thank you for the opportunity to address the Subcommittee this morning concerning the status of the investigation being conducted by Office of Inspector General (OIG) for the Department of the Interior (DOI) into the circumstances surrounding the failure of Minerals Management Service to include price thresholds in deepwater leases entered into during 1998 and 1999. You have also requested that I address "the institutional culture of managerial irresponsibility and lack of accountability" that lies beneath some of the most significant failures within the Department.

Let me begin with a brief description of the process we undertake when conducting an investigation. OIG investigations spring from numerous sources: requests from Congress; requests from the Secretary or other senior DOI officials and credible allegations by DOI employees, public citizens, or anonymous sources. Regardless of the source, our investigations are conducted prudently, thoroughly and completely. We always proceed at a deliberate pace, but speed never supersedes accuracy. Although often pressured to do so, we will not rush an investigation to meet the specific needs of any source.

The subject matter underlying most of our high-profile investigations is often fraught with fervent emotions, strong opinions and competing interests. The issues pertaining to the deepwater leases are no exception. Armed with the protections afforded by the IG Act, however, we undertake investigations with no preconceived notions and

no preordained outcomes. With the very integrity of the OIG at stake each time we conduct an investigation, we must demonstrate professionalism, independence and objectivity at all times. As the content of our previous reports demonstrates, we will condemn the Department for wrongdoing and we will exonerate the Department when allegations prove unfounded.

We generally conduct our investigations from the lowest level to the highest; from the least culpable to the most. Our investigators travel throughout the country, as necessary, to interview witnesses and secure documentary and physical evidence. When highly technical or specialized issues arise, we may secure the assistance of independent subject-matter experts, or partner with other law enforcement entities that possess a required expertise.

We report the results of our investigations in a variety of formats, choosing the most appropriate format for the purpose at hand. If we are referring a case for criminal prosecution, we do so by way of a formal Report of Investigation, a document which contains all witness interviews, evidentiary documents and investigative activity reports. If we are referring a matter for administrative action by the Department, we may tailor Reports of Investigation to address the conduct of individual employees, when such information can be reasonably segregated. If we are preparing a report for release to the public, it will typically be written in narrative form, but with confidential, personal privacy, and other privileged information redacted.

Whether an investigation results in the prosecution and conviction of a criminal defendant or disciplinary action against an employee engaged in misconduct, I am most pleased when the results of an investigation also give the Department insight and

incentive to improve the way in which it conducts itself, and in doing so, prevents the problem from recurring.

I would like to give this Subcommittee my assurance that OIG investigators are working diligently to finalize our report of investigation concerning the terms of the deepwater leases issued in 1998 and 1999. In summary, we conducted our investigation with two primary questions in mind: How and why were price thresholds omitted from the deepwater leases of 1998 and 1999; and what happened once the omission was discovered. What we know is that MMS told us that they intended to include price thresholds in leases issued pursuant to the Deepwater Royalty Relief Act, as evidenced in the first leases issued in 1996 and 1997. As MMS was developing new regulations relating to the Deepwater Royalty Relief Act, confusion arose among MMS components as to whether or not the regulations would address price thresholds. In the end, the regulations did not.

The person responsible for directing the preparation of the leases said he was told by those in MMS' Economics and Leasing Divisions to take the price threshold language out of the leases. This individual submitted to a polygraph, and passed.

Those in the Economics and Leasing Divisions denied doing so. One of these individuals provided a sworn statement, submitted to a polygraph, and passed. Another individual refused to provide a sworn statement, so was not asked to take a polygraph. The third individual provided a sworn statement, but refused to take a polygraph.

The attorney involved in both processes conceded to an MMS official that he should have spotted the omission, but did not. The official who signed the leases on behalf of MMS told us he relied on counsel and his staff.

When the omission was discovered by MMS staff in 2000, it was not conveyed to the MMS Directorate. We interviewed the former MMS Directors who were in place at the time of the omission and the time of its discovery. Each told us that they only became aware of the omission when the *New York Times* article came out this year.

So far we have interviewed 29 witnesses, including present and former DOI employees. We have obtained approximately 11,000 MMS e-mails through a storage system unique to the Department, necessitated by the Indian Trust litigation, and, using software developed by OIG forensics specialists, we searched this universe to extract e-mails potentially relevant to this issue. We then conducted further investigative analysis, and determined that less than twenty e-mails were specifically on-point.

We found a brief flurry of e-mail discussion in 2000 about the discovery of the omission of price thresholds, and the e-mails document the decision not to advise the Director. Unfortunately, the official who made this particular decision is deceased. We did not find any e-mail prior to 2000 that touched on this issue.

Mr. Chairman, in the end, unless we come across something entirely unexpected, this appears to be an example of bureaucratic bungling, of the stove-piping of various responsibilities involved in a complex undertaking, reliance on a surname-process which dilutes responsibility and accountability by including virtually every official involved, having no one person ultimately responsible for the quality assurance of the final product. Although we have found massive finger-pointing and blame enough to go around, we do not have a "smoking gun;" we do, however, have a very costly mistake which might never have been aired publicly absent the *New York Times*, the interest of this Committee,

the Senate Committee on Energy and Natural Resources and that of several other interested members of Congress.

This brings me to the second matter of concern to the Committee – the culture at the Department of the Interior that sustains managerial irresponsibility and a lack of accountability. I would like to speak about this culture in very general terms, if I may. In fairness, I cannot speak about it in terms of the 1998-1999 deepwater royalty relief issue, since the Secretary has not yet had the benefit of our report on the matter. In fact, while Secretary Kempthorne has essentially inherited the culture at Interior, he has already signaled, both in terms of his early messages to Interior employees and in discussions with me, his intentions to create and sustain a culture of ethics and accountability during his tenure as Secretary of the Interior. Therefore, I am hopeful at this juncture that the culture that I describe in my testimony today will soon become a thing of the past.

I recently marked my seventh anniversary as Inspector General for the Department of the Interior. Over the course of this seven year tenure, I have observed one instance after another when the good work of my office has been dynamically disregarded by the Department. Simply stated, short of a crime, anything goes at the highest levels of the Department of the Interior. Ethics failures on the part of senior Department officials – taking the form of appearances of impropriety, favoritism, and bias – have been routinely dismissed with a promise "not to do it again." Numerous OIG reports, which have chronicled such things as complex efforts to hide the true nature of agreements with outside parties; intricate deviations from statutory, regulatory and policy requirements to reach a predetermined end; palpable procurement irregularities; massive project collapses; bonuses awarded to the very people whose programs fail; and

indefensible failures to correct deplorable conditions in Indian Country, have been met with vehement challenges to the quality of our audits, evaluations and investigations. Typically, the Department has disputed a number of negligible details contained in our reports, losing sight of – or, perhaps intentionally eclipsing – the greater issues, tainting the whole of any given report with trifling details.

In one particularly contentious investigation of a high-level official that we conducted over the course of several years, and which cost my office well over $1 million, we were met with just such an assault from two different fronts – both the Department and the Office of Government Ethics (OGE). At the conclusion of our investigation, we sought the opinion of OGE on myriad issues. We were astonished to learn that, following a lengthy and time-consuming analysis, OGE would only opine when they believed that no ethics violation had occurred; they would not opine that an ethics violation had occurred, deferring to the Secretary and her ethics office for such a determination. In this particular case, we had also sharply criticized the Department's ethics office, which is why we referred the matter to OGE. The Catch-22 we found ourselves in was disheartening.

When I transmitted this particular Report of Investigation to former Secretary Norton, I commented that:

> ….the American public is not equipped to conduct the kind of tortured analysis necessary to come to a sound legal conclusion in matters like this. Whether a violation occurred or not may ultimately be irrelevant. Mere appearances, however, will erode the public trust. Once eroded, that trust is difficult – if not impossible – to win back. This is only one in a series of cases in which we have observed an institutional failure to consider the appearance of a particular course of conduct on the part of Departmental employees and officials. It is my hope, however, that this may be the case that changes the ethical culture in the Department.

Clearly, Mr. Chairman, my hope was not realized. In fact, former Secretary Norton met with me at length and indicated that she accepted this official's admission that he exercised bad judgment, but given his promise not to do so again, she was unwilling to take any action against him.

I have watched a number of high-level Interior officials leave the Department under the cloud of OIG investigations into bad judgment and misconduct. Absent criminal charges, however, they are sent off in usual fashion, with a party paying tribute to their good service; wishing them well, to spend more time with their family or seek new opportunities in the private sector. This charade does not go unnoticed by the career public servants, many of whom have been witnesses in our investigations. What are these civil servants to think? If those at the top are not held accountable, why should those at lower levels not feel empowered to challenge the call for accountability?

In June 2004, my office issued an evaluation report on *Conduct and Discipline* at the Department which chronicled an unfortunate culture of inequity and ineffectiveness. This report included an employee survey which revealed widespread skepticism regarding the fairness of the Department's discipline policies. For instance, over one-third of the respondents believed that discipline for misconduct depended on who committed the offense, rather than the offense itself. A startling forty-six percent of respondents stated that discipline was administered fairly only "sometimes," if ever. During this evaluation, we also conducted a number of "town meetings." At over half of these meetings, employees reported that supervisors were either not disciplined at all or disciplined more leniently. This failure to hold the leadership of the Department accountable sets the stage for the remainder of the workforce. If one subscribes to the

concept of “leading by example,” it is no wonder that a “culture of managerial irresponsibility and lack of accountability” thrives at Interior.

This culture also drives much of the work that my office does. Shortly after I arrived at the Office of Inspector General, I created the Program Integrity Unit. Initially, it was a small, dedicated unit to promptly investigate allegations against senior-level officials. Over the years, however, I have reluctantly dedicated more and more resources to this “specialized” entity, which now constitutes the largest investigative unit in the OIG, and which is unparalleled in federal OIG counterparts. This unit operates under extraordinary pressure, both internal and external. The Program Integrity Unit “enjoys” a boundless source of complaints, allegations and requests for investigation. Before one priority case can be completed, two or three or more are in the queue. This is simply not the mark of good government.

Mr. Chairman, I do not have a simple solution. I am hopeful that somehow the Congress, Secretary Kempthorne and I can work together constructively to disassemble this troubling culture at Interior and replace it with a strong, sustainable culture of ethics, responsibility and accountability. I am in the process of collecting my thoughts about this issue, and memorializing them in a white paper, which may serve as a roadmap as we undertake this daunting task.

This concludes my formal testimony. Thank you for the opportunity to appear here before the Subcommittee today. I will be happy to answer any questions you may have.